



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000  
TTY 711 or 800-833-6388 (for the speech or hearing impaired)

August 10, 2006

**REGISTERED MAIL**

Washington State Department of Transportation  
I-405 Project Office  
Attn: Allison Ray  
600 108<sup>th</sup> Avenue NE, Suite 405  
Bellevue, WA 98004

City of Renton  
Surface Water Utility  
Attn: Ron Straka, P.E.  
Renton City Hall, 5<sup>th</sup> Floor  
1055 South Grady Way  
Renton, WA 98055

**RE: Water Quality Certification Order #3432 and Coastal Zone Management consistency determination for Corps Public Notice No. 200600100 for the Springbrook Creek Wetland and Habitat Mitigation Bank to re-establish, rehabilitate, and enhance a wetland and riparian complex on 129 acres connecting directly to Springbrook Creek in the City of Renton, King County, Washington.**

Dear Ms. Ray and Mr. Straka:

On January 20, 2006, the Washington State Department of Transportation (WSDOT) and the City of Renton submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification under the federal Clean Water Act for the proposed Springbrook Creek Wetland and Habitat Mitigation Bank. The project proposes to construct and operate a 129-acre mitigation bank that includes portions of 5 different Units (Units A, B, C, D, and E) by re-establishing 17.79 acres of wetlands, rehabilitating 52.16 acres of wetland, enhancing 32.55 acres of wetland, enhancing 7.80 acres of upland, and enhancing 6.55 acres of riparian upland adjacent to Springbrook Creek. The project also proposes to connect wetland to Springbrook Creek within several of these areas.

On behalf of the State of Washington, Ecology certifies that the work proposed in the JARPA Ecology received on January 20, 2006, and as updated on April 9, 2006, and the public notice complies with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean



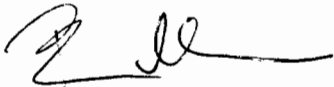
Water Act, as amended, and other appropriate requirements of state law. This certification is subject to the conditions contained in the enclosed Order.

On March 1, 2006, WSDOT submitted to Ecology a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with WSDOT's determination that this work is consistent with the approved Washington State CZMP. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the federal Water Pollution Control Act.

This letter also serves as a State response to the Corps of Engineers' Public Notice. The enclosed Order may be appealed by following the procedures described in the Order.

If you have any questions, please contact Rebecca Ponzio, the Federal Project Coordinator for this project, at (425) 649-7181 or [rpon461@ecy.wa.gov](mailto:rpon461@ecy.wa.gov).

Sincerely,



Brenden McFarland, Section Manager  
Shorelands and Environmental Assistance Program

cc: Terry Drochak, Transportation  
Sandra Manning, Corps  
Rebecca McAndrew, Corps  
John Maas, Transportation  
Christina Martinez, Transportation  
Don Ponder, WDFW  
Jim Fraser, WDFW  
Kim Harper, Ecology  
Jerry Shervey, Ecology  
Joan Cabreza, EPA  
Emily Teachout, USFWS  
Gail Terzi, Corps  
Gretchen Lux, Ecology

e-cc: Penny Keys, Ecology  
Loree' Randall, Ecology

<b>IN THE MATTER OF GRANTING A</b>	)	<b>ORDER # 3432</b>
<b>WATER QUALITY</b>	)	<b>Corps Reference No. 200600100</b>
<b>CERTIFICATION TO</b>	)	Create a 129-acre wetland mitigation bank by re-
<b>Washington State Department of</b>	)	establishing, rehabilitating, and enhancing
<b>Transportation and the City of Renton</b>	)	wetlands and riparian complex. The project will
in accordance with 33 U.S.C. 1341	)	be connecting directly to Springbrook Creek in
(FWPCA § 401), RCW 90.48.120, RCW	)	the City of Renton, King County, Washington.
90.48.260 and Chapter 173-201A WAC	)	
	)	

TO: Washington State Department of Transportation  
I-405 Project Office  
Attn: Allison Ray  
600 108<sup>th</sup> Avenue NE, Suite 405  
Bellevue, WA 98004

City of Renton  
Surface Water Utility  
Attn: Ron Straka, P.E.  
Renton City Hall, 5<sup>th</sup> Floor  
1055 South Grady Way  
Renton, WA 98055

On January 20, 2006 the Washington State Department of Transportation (WSDOT) and the City of Renton (the City) submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on March 13, 2006.

The proposed project entails constructing and operating a 129-acre mitigation bank that includes converting portions of five units (Units A, B, C, D, and E) of open space within the City of Renton to wetlands. The project involves re-establishing 17.79 acres of wetlands, rehabilitating 52.16 acres of wetland, enhancing 32.55 acres of wetland, enhancing 7.80 acres of upland, and enhancing 6.55 acres of riparian upland adjacent to Springbrook Creek. Within several of these areas, the project proposes to connect wetlands to Springbrook Creek. The wetland re-establishment and rehabilitation activities will include excavating major portions of Units C and E; breaching the berms adjacent to Springbrook Creek in Units A and B; diverting an additional water source onto Unit D; installing a weir on Unit C; removing invasive species and installing native woody vegetation in all units; and installing habitat structures in all units. Some in-water work is associated with these activities. A quarter-mile-long trail will also be constructed in Unit A and will include an eight-foot-wide elevated boardwalk trail and a 40-foot-wide protection setback on both sides of the trail. The Bank will be constructed over a two-year period, although the trail may be installed subsequently.

The Springbrook Creek Wetland and Habitat Mitigation Bank Instrument (MBI) includes the detailed implementation plan for the establishment and operation of the Bank. A separate Memorandum of Agreement (MOA) describes the legal agreements made by the permittees and the signatory agencies for the Bank.

The proposed work will take place within the City of Renton in King County, Washington; within, adjacent to or near Springbrook Creek, within the Black River Basin in the Green-Duwamish Watershed, Water Resource Inventory Area (WRIA) 9. The project area includes portions of Sections 25 and 36, Township 23N, Range 4E; and Section 30, Township 23N, Range 5E. The five units are located as follows:

- Unit A is 26 acres and is located between SW 27<sup>th</sup> Street and SW 30<sup>th</sup> Street, west of Lind Avenue and east of and adjoining Springbrook Creek. The southern boundary is undeveloped right of way adjacent to developed light industrial zoned property.
- Unit B is 36.4 acres in size and is located immediately south of SW 27<sup>th</sup> Street, adjacent to and west of Springbrook Creek, east of Oakesdale Avenue SW, and north of a commercial development.
- Unit C encompasses 47.7 acres and is located east of the Burlington Northern Santa Fe (BNSF) railroad right of way and west of Oakesdale Avenue SW. North of Unit C is undeveloped land and south of Unit C is a BNSF railroad facility and undeveloped property. Unit C is west of Unit B across Oakesdale Avenue SW.
- Unit D is a 5.5-acre site located immediately north of a City of Tukwila wetland mitigation site adjacent to SW 43<sup>rd</sup> Street. It is bordered on the west and north by BNSF right of way and to the east by developed light industrial zoned property. Unit D is about 0.4 mile south of Unit C.
- Unit E is a 14.7 acre property located south of developed light industrial zoned land and SW 34<sup>th</sup> Street, northwest of Springbrook Creek, and east of Oakesdale Avenue SW. Unit E is upstream of Units A and B on Springbrook Creek by about 0.3 mile.

## **AUTHORITIES**

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 303, 306 and 307);
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. §1313 and by Chapter 90.48 RCW, and with other applicable state laws; and

3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

## **WATER QUALITY CERTIFICATION CONDITIONS**

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. §1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicants subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicants to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Washington State Department of Transportation and the City of Renton from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

### **A. General Conditions**

1. For purposes of this Order, the term "Applicants" shall mean the Washington State Department of Transportation and the City of Renton, and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required as conditions shall be sent to Ecology's Northwest Regional Office, Attn: Federal Project Coordinator – MAP Team, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008 or via e-mail (preferred), if possible, to the Coordinator assigned to this project. Notifications shall be made via phone and /or e-mail (preferred). All submittals and notifications shall be identified with Order No. 3432 and include the Applicant's name, project name, project location, the project contact and the contact's phone number.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on January 20, 2006 and as updated by the April 9, 2006 JARPA. The Applicants will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.
4. Within 30 days of receipt of an updated JARPA Ecology will determine if the revised project requires a new Water Quality Certification and public notice or if a modification to this Order is required.
5. This Order shall be rescinded if the Corps does not issue a Section 404 permit.

6. This Order does not exempt, and is provisional upon, compliance with other statutes and codes administered by federal, state, and local agencies.
7. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
8. The Applicants shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
9. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
10. The Applicants shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicants shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project.
11. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
12. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000.00) per violation per day for each day of continuing noncompliance.

**B. Notification Requirements**

1. Notification shall be made to Ecology's Federal Project Coordinator - MAP Team at 425-649-7181, fax 425-640-7098, mail 3190- 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452, or email (preferred) at [rpon461@ecy.wa.gov](mailto:rpon461@ecy.wa.gov) for the following activities:
  - a. At least 10 days prior to the pre-construction meeting;
  - b. At least 10 days prior to the onset of initiating work on the project site;
  - c. At least 14 days prior to the placement of fill in any waters of the state, including wetlands;
  - d. At least 5 days prior to initiating work on each Unit (Units A, B, C, D, and E);

- e. At least 5 days prior to initial breaching of the berms on Units A and B;
- f. At least 5 days prior to opening the connections to Springbrook Creek on Unit E;
- g. Within 14 days after completion of final grading on each Unit;
- h. Immediately via phone or email following a violation of state water quality standards or conditions of this Order.

NOTE: These notifications shall include the Order # 3432, applicant's name, project name, project location, contact name, and contact's phone number.

### **C. Water Quality Standards Conditions**

1. Springbrook Creek is classified as a Class A water of the state. Certification of this proposal does not authorize the Applicants to exceed applicable state water quality standards (Chapter 173.201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology.
2. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3). Furthermore, nothing in this certification shall absolve the Applicants from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.
3. Springbrook Creek has been identified on the current 303(d) list as exceeding state water quality standards for dissolved oxygen and fecal coliform. This proposed project shall not result in further exceedances of water quality standards.

### **Water Quality Monitoring**

4. The Applicants shall submit a Water Quality Monitoring Plan (Plan) for review and approval to the Federal Project Coordinator at least twenty (20) days prior to beginning in-water work. Activities that are required to be monitored are not authorized to be conducted until approval is received. This Plan shall include the following information:
  - a. Name(s) and phone number(s) of person(s) responsible for monitoring;
  - b. Map with numbered or named sampling locations associated with each in-water activity. Include the background and the point of compliance (100, 200, or 300 feet downstream from the point of activity);
  - c. Parameters to be monitored: turbidity and pH;
  - d. A description of the Best Management Practices (BMPs) that will be used on the project to protect water quality, including a description of procedures for breaking the berms on Unit A and B, connecting Unit E to Springbrook Creek, installing the new drainage conveyance pipe in the wetland on Unit D, and installing the weir on Unit C;
  - e. Project activities that shall be monitored (i.e. turbidity for in-water work and pH for concrete);

- f. Sample frequency for each activity to be monitored; and
  - g. Example of monthly summary report.
- 5. Monitoring results shall be submitted monthly to the Federal Project Coordinator per Condition B.1.
- 6. If monitoring results show that water quality standards are not being met, the Applicants shall modify or stop the activity causing the problem and commence hourly monitoring until standards are met for two (2) consecutive sample periods.
- 7. All monitoring results shall be kept onsite and submitted to Ecology upon request.

**D. Construction Conditions**

- 1. During construction of the Bank the Applicants shall comply with the current Construction Stormwater General NPDES Permit issued for this project (Permit # WAR-006861A). Per this permit, a Stormwater Pollution Prevention Plan shall be prepared. This Stormwater Pollution Prevention Plan shall be sent to the Federal Project Coordinator according to Condition A.2 prior to the initiation of construction.
- 2. Before construction of the Bank begins, a pre-construction meeting shall be held on-site between the project engineer, all necessary construction contractors, and agency representatives including, at a minimum, Ecology and the Corps. During this meeting, site conditions, permit specifications, including Order 3432, and the requirements of the Stormwater Pollution Prevention Plans will be reviewed.
- 3. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
- 4. Periodic inspection and maintenance of all erosion control structures shall be conducted no less than every seven (7) days from the start of the project to site stabilization. Additional inspections shall be conducted prior to and after expected rainfall events to ensure erosion control measures are in working conditions. Any damaged structures shall be immediately repaired. If it is determined at the time of inspection that additional measures are needed to control stormwater and erosion, they shall be implemented immediately.
- 5. Machinery and equipment used during construction shall be serviced, fueled, and maintained in uplands in order to prevent contamination to surface waters. All fueling areas shall be provided with adequate spill containment and shall be located a minimum of 50 feet from surface waters of the state. During fueling and servicing of machinery, BMPs shall be in place to contain any spill of petroleum products.



6. Work in or near waters of the state shall be done in a manner that minimizes turbidity, erosion, and other water quality impacts through the use of appropriate and effective BMPs.
7. Construction entrances and tire wash areas shall be constructed and operated to avoid introduction of materials, including sediment, into Springbrook Creek and others waters of the state, including wetlands.
8. No petroleum products, fresh concrete, construction debris, or other toxic or deleterious materials shall be allowed to enter waters of the state.
9. Prior to disturbing uplands or wetlands on the project site, the adjacent wetlands and stream shall be protected from construction impacts. Within the project limits, the Applicants shall mark the limits of the work area in which heavy machinery will be allowed with highly visible construction fence prior to beginning clearing or other construction activities within 200 feet or less of sensitive aquatic areas. Heavy machinery shall enter and operate only within the designated work zones, access corridors, and stockpile areas.
10. No excavated material shall be stored in existing wetlands. Temporary storage of excavated material is allowed in upland areas that will be excavated for the purposes of re-establishing wetland. All excavated material that is in excess of what shall be used on-site shall be removed from the bank site.
11. All construction debris and overburden material shall be properly disposed of on land, outside of sensitive areas and their buffers, so that it cannot enter a waterway or cause water quality degradation to state waters.
12. During clearing and grading at the project site, the Applicants shall take all necessary measures to minimize the alteration or disturbance of existing wetland and upland vegetation.
13. The Applicants shall comply with the most current applicable NPDES permit for Aquatic Noxious Weed Control if herbicides are selected to control invasive species. Measures, including but not limited to selection of appropriate application methods and timing, shall be used to minimize introduction of herbicides to Springbrook Creek. Application of herbicides shall occur only in dry weather.
14. Adequate containment shall be used for any mechanical equipment on a structure over water, such as a temporary work bridge or platform, in order to prevent any spills and/or discharges of contaminants to waters of the state.
15. Measures shall be used to minimize disturbance of vegetation when constructing the trail.

16. All disturbed areas resulting from the construction of the trail shall be adequately stabilized within seven (7) days after the trail is completed so as to prevent erosion or sediment debris from entering waters of the state, including wetlands.

**E. Mitigation Bank Conditions**

1. Project activities shall be achieved through measures described in the following documents, except as modified by this Order:
  - a. Springbrook Creek Wetland and Habitat Mitigation Bank Instrument, Washington State Department of Transportation, August 2006.
  - b. Springbrook Creek Wetland and Habitat Mitigation Bank Memorandum of Agreement, Washington State Department of Transportation, August 2006.
2. All changes to the approved Mitigation Bank Instrument (MBI) and Memorandum of Agreement (MOA) must be approved in writing by Ecology and the Corps.
3. No mitigation credits associated with this mitigation bank shall be released for sale or transfer until an approved MOA and MBI are signed by the bank sponsors, Ecology and the Corps, and a conservation easement is placed on the property title and properly recorded with King County. Thereafter, credits shall be released in accordance with the terms and provisions of the MBI and the MOA.

**F. Timing Requirements**

1. This Order is valid until the establishment phase of the bank is terminated, as defined in Article IV.K. of the final MOA.
2. In-water work shall be subject to timing limitations imposed by the most current Hydraulic Permit Approval (HPA) by the Washington State Department of Fish and Wildlife (WDFW).

**G. Emergency/Contingency Measures**

1. The Applicants shall develop a spill prevention and containment plan for all aspects of this project.
2. The facility shall have adequate and appropriate spill response materials on hand to respond to an emergency release of petroleum products or any other material into waters of the state.
3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into waters of the state.
4. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state

waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicants shall immediately take the following actions:

- a. Cease operations at the location of the violation.
  - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
  - c. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include the proper disposal of any spilled material and used cleanup materials.
  - d. Notify Ecology of the failure to comply. Immediately notify Ecology's Northwest Regional Spill Response Office at 425-649-7000, **and** within 24 hours of spills or other events to Ecology's Federal Project Coordinator – MAP Team at (425) 649-7181.
  - e. Submit a detailed written report to Ecology within five (5) days that describe the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.
- 5 In the event of finding distressed or dying fish, collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the Applicants receive further instructions from Ecology. Ecology may require analysis of these samples before allowing the work to resume.

#### **H. Appeal Process**

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board  
4224 - 6th Avenue SE, Rowe Six, Bldg. 2  
P.O. Box 40903  
Lacey, Washington 98504-0903

Your appeal must also be served on:

The Department of Ecology  
Appeals Coordinator  
P.O. Box 47608  
Olympia, Washington 98504-7608.

In addition, please send a copy of your appeal to:

Federal Permit Appeals Coordinator  
Department of Ecology  
P.O. Box 47600  
Olympia, Washington 98504-7600

*For additional information: Environmental Hearings Office Website: <http://www.eho.wa.gov>*

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated Aug 10, 2006 at Olympia, Washington.



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Brenden McFarland, Section Manager  
Shorelands and Environmental Assistance Program  
Department of Ecology  
State of Washington

Attachment A:  
Water Quality Certification Order #  
Statement of Understanding

I, \_\_\_\_\_, state that I will be involved as an agent or contractor for Washington State Department of Transportation and/or the City of Renton in creating a 129-acre wetland mitigation bank within 5 units in portions of Sections 25 and 36, Township 23N, Range 4E; and Section 30, Township 23N, Range 5E in the City of Renton, King County, Washington.

The Washington State Department of Transportation and the City of Renton are proposing to construct and operate a 129-acre mitigation bank that includes converting portions of five units (Units A, B, C, D, and E) of open space within the City of Renton to wetlands. The project involves re-establishing 17.79 acres of wetlands, rehabilitating 52.16 acres of wetland, enhancing 32.55 acres of wetland, enhancing 7.80 acres of upland, and enhancing 6.55 acres of riparian upland adjacent to Springbrook Creek.

I further state that I have read and understand the relevant conditions of Washington State Department of Ecology Water Quality Certification Order # 3432 and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Company

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, and Zip Code